

DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
SPECIAL EDUCATION DIVISION
MAY 1999

This handout is based on the final federal regulations published on March 12, 1999. Please note that while this interpretation of IDEA will be used by DESE for determining compliance with IDEA, the statutory language is considered by some to require more. Thus you may want to consult with your school district attorney.

DISCIPLINE UNDER THE IDEA AMENDMENTS OF 1997 AND IMPLEMENTING FEDERAL REGULATIONS

There are several discipline options available under IDEA. These include:

1. Ten school days or less: short term suspensions, placement in an appropriate interim alternative educational setting, or placement in another setting, all for 10 school days or less;
2. 45 Calendar Days for weapons/drugs: placement for 45 calendar days in an appropriate interim alternative educational setting, for possession of weapons, or use, possession, or sale, or solicitation of a sale of drugs;
3. 45 Calendar Day "Injunction" for dangerous and violent students: Quasi - Injunction as the result of a due process hearing, for dangerous and violent students, placing student in a 45 calendar day alternative educational placement;
4. Court Injunction: Extent and duration of injunction determined by court for dangerous and violent student .
5. Long-term suspension or expulsion: suspensions in excess of 10 consecutive days, or in excess of 10 cumulative days if a pattern of suspension is created, assuming the IEP team determines the conduct is unrelated to the disability;

Below is a description of the specific discipline provisions in the IDEA Amendments of 1997.

NOTE: Services must be provided to students with disabilities who are suspended for more than 10 days in a school year if school personnel decide services are needed to enable the student to appropriately progress. However, if such suspensions which exceed 10 days in a school year are long-term suspensions or disciplinary changes of placements, then the IEP team must decide upon continued services and the student's continued services must amount to a free appropriate public education, and must continue to allow progress in the general education curriculum.

- I. Ten school days or less: A student may be removed from his placement by the school district's designee, to an appropriate interim alternative educational setting, another setting, or suspension, including a suspension without the provision of educational services, for not more than 10 school days.
- II. 45 calendar days: A student's placement may be changed for 45 days by the school district's designee, to an appropriate interim alternative educational setting, if: 1. the student carried a

weapon to school or to a school function; or 2. knowingly possessed or used illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function. A parent must be immediately notified of the decision to take this disciplinary action and provided a copy of the procedural safeguards.

III. Dangerous Students: If the school district believes a student will injure himself or others, the school district has the right to obtain an expedited due process hearing. The parent must be notified immediately by the district of the decision to take this action and provided a copy of the procedural safeguards. At that hearing, the hearing panel may order a change in placement to an appropriate interim alternative educational setting for not more than 45 days if the hearing panel:

- determines the school district has demonstrated by substantial evidence that maintaining the current placement of such student is substantially likely to result in injury to the student or others;
- considers the appropriateness of the student's current placement;
- considers whether the school district has made reasonable efforts to minimize the risk of harm in the student's current placement including the use of supplementary aids and services; and
- determines that the interim alternative educational setting enables the student to continue to participate in the general curriculum and continue to receive services required by his current IEP.

IV. Functional Behavioral Assessment: on or before the end of the tenth business day of suspension or change to an interim alternative educational setting or another setting pursuant to the disciplinary action which exceeds 10 school days in a school year, if the school district did not conduct a functional behavioral assessment (see suggestions and explanation at end of document) and implement a behavioral intervention plan (see suggestions and explanation at end of document) for such student before the behavior that resulted in the discipline action, the school district must: 1. convene an IEP meeting; and 2. develop an assessment plan to address that behavior and appropriate behavioral interventions to address that behavior. If the student already has a behavioral intervention plan, the IEP team shall review the plan and modify it, as necessary, to address the behavior involved in the disciplinary action. If the student does not have a behavior intervention plan the IEP team must develop one. The IEP meeting to address the functional behavioral assessment and intervention plan is only required the first time suspension exceeds 10 days in a school year.

V. Access to Services: Any interim alternative educational setting determination involving a disciplinary change of placement (a long-term suspension):

- will be made by the IEP team
- must be selected to enable the student to continue to progress in the general curriculum and to continue to receive services required by the IEP
- must include services and modifications designed to address the behavior involved in the disciplinary action so that it does not recur.

VI. Manifestation Determination: No later than ten school days after the date on which the decision to take a disciplinary action involving long-term removal from the child's placement (for more than 10 consecutive days or in excess of 10 days cumulatively if a pattern of suspension is

created), the IEP team shall determine whether there is a relationship between the student's disability and the behavior subject to the disciplinary action. If the conduct is determined unrelated to the disability, disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to student's without disabilities. However, in that event the student **must still receive a free appropriate public education which enables them to continue to progress in the general education curriculum**. If a parent disagrees with a determination that the student's behavior was not a manifestation of his disability, or with any decision regarding placement in a disciplinary situation, the parent has the right to request an expedited due process hearing. If the behavior is determined to be a manifestation of the disability, no long-term suspension or expulsion may be implemented.

A. Factors for IEP team to consider: The IEP team may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team:

- first considers, in terms of the behavior subject to disciplinary action, all relevant information, including:
 1. evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;
 2. observations of the child; and
 3. the child's IEP and placement
- then determines that:
 1. in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
 2. the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
 3. the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

VII. "Stay-put" under disciplinary actions:

If a parent requests a due process hearing regarding the discipline action to challenge the interim alternative educational setting or the manifestation determination, the student will remain in that interim alternative educational setting pending the hearing decision or until expiration of the time period of the interim alternative educational setting, whichever comes first (unless the parties agree otherwise).

If school personnel maintain that it is dangerous for the student to be returned to the student's current placement (the placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the school district may request an expedited hearing.

Notes:

1. A functional behavioral assessment can be a formal or informal assessment to identify the function or purpose the behavior serves for the student so that classroom interventions and behavior support plans can be developed to improve behavior. The assessment could include observations of the behavior, and interviews with family, teachers, and the student, so as to determine the frequency, antecedent and response of the targeted behavior.
2. A behavior intervention plan could include:
 - A. A definition of the target behavior in observable terms;
 - B. Identification of goals that address the behavior (increase, decrease behavior);
 - C. A clear statement of the objective(s) for the student;
 - D. Evaluation criteria of plan and schedule for evaluation;
 - E. CAP (criteria for acceptable performance);
 - F. An outline of interventions, instruction (curricula), and resources that will be utilized to implement the plan;
 - G. A description of inservice of staff who will implement and monitor plan; and
 - H. A statement of each person's responsibility in implementing the plan.
3. Alternative Educational Settings may include alternative schools, in-school suspension, homebound services, or other settings as determined by the IEP team.